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IN THE UNITED STATES DISTRICT COURT AT ALBUQUERQUE NM
FOR THE DISTRICT OF NEW MEXICO

FILED

JUN 29 2000

JOHN LESTER SALAZAR,

Plaintiff,

ROBERT M. MARCH
CLERK

v.

No. CIV-00-0841 JP/WWD

STATE OF NEW MEXICO,
GOVERNOR GARY JOHNSON,
ATTORNEY GENERAL PATRICIA MADRID,
CONGRESSMAN TOM UDALL,
DR. DANIEL P. SEAGRAVE, PSY. D.,
THE LAS VEGAS MENTAL HEALTH
CENTER, THE FORENSIC DIVISION,
BERNALILLO COUNTY DETENTION CENTER,
JOHN DANTIS, JACK YARMOLLA,
DONALD MONTOYA,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* for preliminary review of this pro se Plaintiff's complaint. *See Mallard v. United States Dist. Court*, 490 U.S. 296, 307-08 (1989) ("little doubt" of court's power to dismiss a " 'frivolous or malicious' " action even without the authorization in 28 U.S.C. § 1915). The complaint alleges that Plaintiff has been subjected to excessive force and emotional abuse by corrections officers and mental health workers during his confinement. Plaintiff seeks damages. In reviewing Plaintiff's complaint, the Court applies the same legal standards applicable to pleadings drafted by counsel but is mindful that the complaint must be liberally construed. *Northington v. Jackson*, 973 F.2d 1518, 1520-21 (10th Cir. 1992). For the reasons below, certain of Plaintiff's claims will be dismissed.

Plaintiff's claims against Defendant State of New Mexico are barred by the doctrine of

3

sovereign immunity and the Eleventh Amendment. “[T]he States’ immunity from suit is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today.” *Alden v. Maine*, 527 U.S. 706, ---, 119 S.Ct. 2240, 2246-47 (1999). Furthermore, “the Eleventh Amendment bars a suit brought in federal court by the citizens of a state against the state or its agencies, and applies ‘ “whether the relief sought is legal or equitable.” ’ ” *Johns v. Stewart*, 57 F.3d 1544, 1552 (10th Cir. 1995) (citations omitted). Plaintiff’s claims against Defendant State of New Mexico will be dismissed.

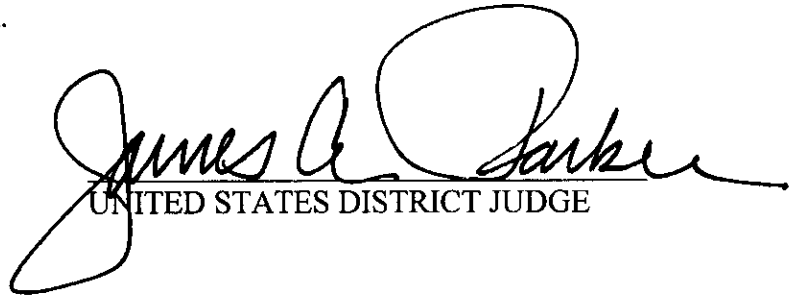
The complaint makes no factual allegations against Defendants Governor Johnson, Attorney General Madrid, Congressman Udall, Las Vegas Mental Health Center, and Bernalillo County Detention Center affirmatively linking them to the asserted violations. *Butler v. City of Norman*, 992 F.2d 1053, 1055 (10th Cir. 1993). To succeed on a complaint under § 1983, Plaintiff must allege some personal involvement by Defendants in the constitutional violation. *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996). A civil rights action against a government official may not be based solely on a theory of respondeat superior liability for the actions of workers supervised by the official. *Id.* Plaintiff’s claims against these Defendants will be dismissed.

Judgment will be entered on Plaintiff’s claims in favor of Defendants State of New Mexico, Johnson, Madrid, Udall, Las Vegas Mental Health Center, and Bernalillo County Detention Center. Because these Defendants are no longer named parties, dismissal of claims against them is “an ultimate disposition of an individual claim entered in the course of a multiple claims action.” *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956), *quoted in Wheeler Mach. Co. v. Mountain States Mineral Enter., Inc.*, 696 F.2d 787, 789 (10th Cir. 1983). The Court therefore expressly determines that there is no just reason for delay of entry of judgment on the order of dismissal, and

will direct entry of final judgment in favor of these Defendants on Plaintiff's claims. Fed.R.Civ.P. 54(b).

IT IS THEREFORE ORDERED that Plaintiff's claims against Defendants State of New Mexico, Johnson, Madrid, Udall, Las Vegas Mental Health Center, and Bernalillo County Detention Center be DISMISSED with prejudice; a form of judgment will be entered in accordance with Fed.R.Civ.P. 54(b);

IT IS FURTHER ORDERED that the Clerk is directed to issue summonses, with notice and waiver forms, for Defendants Seagrave, Dantis, Yarmolla, and Montoya, and to forward these forms to Plaintiff with a copy of this opinion.


UNITED STATES DISTRICT JUDGE